## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

| SUPERIOR AIR PARTS, INC., et al., | §                                 |
|-----------------------------------|-----------------------------------|
|                                   | §                                 |
| Plaintiffs,                       | §                                 |
|                                   | § Civil Action No. 3:14-CV-3492-D |
| v.                                | §                                 |
|                                   | §                                 |
| BRUNO KUBLER, IN HIS CAPACITY     | §                                 |
| AS INSOLVENCY ADMINISTRATOR       | §                                 |
| OF THIELERT AIRCRAFT ENGINES      | §                                 |
| GMBH, et al.,                     | §                                 |
|                                   | §                                 |
| Defendants,                       | §                                 |
|                                   | §                                 |
| V.                                | §                                 |
|                                   | §                                 |
| TECHNIFY MOTORS GMBH              | §                                 |
|                                   | §                                 |
| Intervenor.                       | §                                 |

## INTERVENOR TECHNIFY MOTORS GMBH'S MOTION TO REMAND

Intervenor Technify Motors GMBH ("Technify") files this Motion to Remand this case to the 191st Judicial District Court of Dallas County, Texas.

Defendants have improperly asserted diversity jurisdiction as a basis for removal, when this case includes parties on both sides that are of foreign citizenship. As a matter of law, diversity citizenship does not and cannot exist in a suit between aliens, even if domestic parties have been joined on either side. *Chick Kam Choo v. Exxon Corp.*, 764 F.2d 1148, 1149, 1151 (5th Cir. 1985); *Esquivel v. GAC Express Inc.*, No. SA-05CA1025XR, 2005 WL 345114, at \*2 (W.D. Tex. Nov. 28, 2005); *Zaini v. Shell Oil Co.*, 853 F. Supp. 960, 963 (S.D. Tex. 1994).

Defendants' bases for removal ultimately must fail for multiple reasons. First, Technify is a proper party to this action, and should be aligned as a plaintiff for purposes of determining whether diversity exists. Second, regardless of how Technify is aligned, the Chinese Plaintiffs fraudulent joinder "by clear and convincing evidence." Ayres v. Sears, 571 F. Supp. 2d 768, 773

are properly joined to this case. Defendants ultimately have the "heavy burden" of proving

(W.D. Tex. 2008) (citing Grassi v. Ciba-Geigy, Ltd., 894 F.2d 181, 186 (5th Cir. 1990)).

Defendants have failed to meet that burden, and indeed cannot do so under the facts of this case.

Finally, Defendants cannot base their removal entirely upon 28 U.S.C. § 1452, which in any case

authorizes remand under equitable circumstances that are present in this case. When properly

considering the citizenship of all properly joined and properly aligned parties, there is no

jurisdiction over this case, and it must be remanded.

As required by Local Rule 7.1, Technify is also filing and refers the Court to its Brief in Support of this Motion, which provides the detailed legal grounds supporting its position. Technify respectfully requests that its Motion be granted, and for all other relief the Court deems

just and proper.

Dated: October 24, 2014.

Respectfully submitted,

/s/ Ross Cunningham

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ATTORNEYS FOR INTERVENOR TECHNIFY

**MOTORS GMBH** 

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## **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule 5 on October 24, 2014. As such, this document was served on all counsel who are deemed to have consented to electronic service.

/s/ Ross Cunningham
Ross Cunningham